
CITIZENSHIP RIGHT UNDER THE CONSTITUTION: COMPARATIVE ANALYSIS BETWEEN THE U.S, U.K, AND INDIA

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Introduction

Citizenship and nationality are frequently used interchangeably. However, when used in settings other than nationality, citizenship refers to the legal rights and duties that come with nationality under domestic law. A citizen is an active member of the political community who receives citizenship by completing the legal conditions established by the national, state, or municipal governments. Nations provide special rights and privileges to their residents in exchange for their compliance with national laws and defence of the country against opponents. The value and significance of citizenship vary by country. In some countries, citizenship entails voting rights, eligibility for government positions, and access to social benefits such as unemployment insurance. It is crucial to note that presence in a country does not imply citizenship; individuals who are citizens of one country but live in another are referred to as aliens, and their rights and obligations are governed by political treaties and national laws. Citizenship acquisition is usually regulated by two well-known principles: "jus soli," which awards citizenship based on place of birth, and "jus sanguinis" which acknowledges citizenship based on blood relations.¹ This paper provides a study of citizenship under the Constitution of India and compares it with the Constitution of the US and the UK. It also studies judicial pronouncements and the recent trends relating to citizenship. Lastly, it justifies why these two states have been picked by the researcher for the purpose of the study and provides its concluding remarks.

The Right of Citizenship under the Constitution of India: An Overview

The Indian Constitution does not give any precise definitions for the terms "citizenship" or

¹ THE HINDU, [https://www.thehindu.com/news/national/citizenship-amendment-bill-gets-presidents-assentbecomes-act/article30290591.ece#:~:text=President%20Ram%20Nath%20Kovind%20on,turning%20it%20into%20an%20Act,\(last visited on January 18th, 2024\)](https://www.thehindu.com/news/national/citizenship-amendment-bill-gets-presidents-assentbecomes-act/article30290591.ece#:~:text=President%20Ram%20Nath%20Kovind%20on,turning%20it%20into%20an%20Act,(last%20visited%20on%20January%2018%20th%202024).).

“citizen”. Nevertheless, citizenship can be defined as the connection between an individual and their State, suggesting a feeling of belonging and loyalty. Essentially, it is a principle of incorporating individuals, since it differentiates between individuals who are citizens and those who are not.² Citizens are considered to be complete participants in a State and have a duty to express their loyalty to it, while also benefiting from all the rights related to civil and political matters. The Constitution lacks a robust legal framework for citizenship. The second part of the Constitution delineates the classifications of individuals acknowledged as citizens of India.³ The control of citizenship is under the jurisdiction of the Central government, as specified in the Union List, which is within the purview of Parliament.

The Constitution classifies certain groups of individuals who are eligible for citizenship. While the entire Constitution came into effect on January 26, 1950, these specific clauses were enforced on November 26, 1949, the day when the Constitution was adopted. By virtue of Article 5 individuals who were born and residing in India are eligible to get citizenship. Besides those who have their abode in India but were not born here are considered citizens if at least one of their parents was born in India.⁴ Also, those who have been ordinary residents for a period of time that is greater than five years are qualified to submit an application for citizenship. Article 9 states that individuals who willingly gain citizenship of a foreign state would be stripped of their Indian citizenship. The Citizenship Act of 1955 lays out the processes that applicants must go through in order to get or lose their Indian citizenship. According to the Act there are five different ways to acquire Indian citizenship. These are by birth, descent, registration, naturalisation, and incorporation of territory.⁵

An Overview of the Citizenship Right under the Constitution of the US and the UK

In the USA the right of Citizenship is granted to people that are born or naturalised there and are subject to its authority. The citizenship rights in the US should be examined in consonance with the fourteenth amendment to its Constitution. It became enacted on 9th of July 1868 as a part of the Reconstruction Amendments. This amendment came in reaction to the concerns of

² Purkayastha D, “What Is the Citizenship (Amendment) Bill, 2016?” (*The Hindu*, May 26, 2018) <<https://www.thehindu.com/news/national/other-states/what-is-the-citizenship-amendment-bill2016/article23999348.ece>>

³ Manupatra, “Articles – Manupatra” <<https://articles.manupatra.com/article-details/Constitutional-Validity-ofCitizenship-Amendment-Act-2019>>

⁴ Deepak K Singh, *Lost In Transition: A Narrative of Non Existence*, ECONOMIC AND POLITICAL REVIEW, Vol. 51, Issue 36, (2016).

⁵ MHA, https://www.mha.gov.in/PDF_Other/AnnexVI_01022018.pdf, (last visited on January 18th, 2024).

formerly enslaved Americans in the aftermath of the American Civil War.⁶ That is why it is essentially categorised as being one of the most significant one within the formation of citizenship rights. When it involves the United Kingdom, it is important to point out that the

Constitution of that country is not written down. The British Nationality Act 1981 which came into effect on the 1st January 1983 is the statute that governs their citizenship.⁷ This Act is applicable to the British Islands which incorporates the UK, its crown dependencies, and the fourteen territories. The people who had been born within the British Islands before January 1, 1983 were automatically granted citizenship from the very beginning irrespective of the nationality of their parents. After this date, citizenship at the start is handiest provided to the ones if at least one of their parents is a citizen or has mounted popularity in the country. Individuals who are not residents of the UK are eligible to be naturalised residents. Despite the truth that the UK left the EU in 2020, citizens of the United Kingdom hold to have the right to live in the Republic of Ireland due to the fact it's a member of the Common Travel Area.

Case Laws

As per the decision in *Pradeep Jain v. UOI*⁸, the place of residence is the country in which a person is physically or legally resident. In *Muhammad Raza v. State of Bombay*⁹, the Supreme Court held that a person's "domicile" is his permanent residence or place of intended permanent residence. "domicile" is an established relationship with the territorial system. The Supreme Court of India *Yogesh Bhardwaj v. State of Uttar Pradesh*¹⁰ 1991 affirmed that Article 5 of the Constitution of India recognizes national domicile and not state domicile.

In the case of *Tata Engineering v. State of Bihar*¹¹ 1965, the shareholders of the firm argued that even if the corporation itself was not a citizen, the shareholders were citizens and so the basic rights of a shareholder should be safeguarded by disregarding the corporate structure. The Supreme Court, in rejecting the aforementioned argument, maintained that objectives that cannot be attained directly cannot be attained indirectly. Consequently, the corporation does not enjoy the safeguarding of basic rights by its shareholders. The 14th Amendment to the US

⁶ "Return of the Frontier on JSTOR" (www.jstor.org) <<https://www.jstor.org/stable/26585101>>

⁷ M. Bhatia, *State Violence in India: From Border Killings to the National Register of Citizen and the Citizenship Amendment Act*, PALGRAVE McMILLAN, (2021)

⁸ *Pradeep Jain v. UOI* (1984) INSC 115.

⁹ *Muhammad Raza v. State of Bombay* 1966 AIR 1436.

¹⁰ *Yogesh Bhardwaj v. State of Uttar Pradesh* AIR 1991 SC 356.

¹¹ *Tata Engineering v. State of Bihar* 1965 AIR 40.

Constitution contains several provisions This includes Citizenship, Privileges or Immunities, Due Process and Equal Protection. The Citizenship Clause supersedes the US Supreme Court's decision in *Dred Scott v. Sandford*¹². The case declared that persons of African slave origin cannot be recognized as citizens of the United States. In the case of *Elk v. Wilkins*¹³ The Court observed that the purpose of the 14th Amendment was to settle the debate. It was to direct that anyone regardless of their race or whether they were a former slave or not or whether they were born in the US or naturalised or whether they had any allegiance to a foreign power, should be considered a citizen of both the US and the state where they reside.

A Comparative Analysis of the Three States and Recent Trends

The United States adheres to the principle of jus soli. This provides citizenship to anybody born in its territory. This is regardless of their parents' citizenship status. This law is codified in the 14th Amendment. It also permits jus sanguinis which grants citizenship to individuals born to US citizens. But this is subject to some qualifications. Naturalization is another road to citizenship in the United States. This is open to immigrants who meet specific residency conditions and with established high moral character and those who pass a citizenship test. The United Kingdom applies a blend of jus soli and jus sanguinis principles for granting citizenship. The British citizenship legislation is complex. It has evolved over time. It has distinct regulations governing those born before or after specified dates. It contains various criterias for acquiring citizenship through descent, registration, or naturalisation. The British Nationality Act of 1981 is the parent piece of legislation regulating the subject. It points out the numerous paths to attain citizenship. This will in turn grant the citizens the rights and obligations that come with it. The Indian Constitution allows for several methods of obtaining citizenship. The methods include birth, descent, registration, and naturalisation. The Citizenship Act of 1955 and later revisions define the situations and methods for acquiring citizenship in India. India does not officially permit dual citizenship. However, it does apprehend Overseas Citizen of India (OCI) and Person of Indian heritage (PIO) reputation, which grants fundamental rights and privileges to human beings of Indian heritage residing foreign places.

Citizenship rights in the United States are assured via the Bill of Rights and subsequent constitutional amendments. These amendments guard essential freedoms such as free speech,

¹² *Dred Scott v. Stanford* 60 US 393 (1856).

¹³ *Elk v. Wilkins* 112 US 94 (1884).

religion, and the right to form assembly. They assure citizens the right to vote in federal elections, run for public office, and take part in the political system. Citizens are also protected from discrimination primarily based on race, gender, religion, and other factors, as exact in several civil rights laws.¹⁴ Citizenship rights in the United Kingdom come from a variety of sources such as common law, international conventions, statutes, etc. British citizens have the ability to vote and run for office in local, parliamentary, and European Parliament elections (before Brexit). The Human Rights Act of 1998 in the United Kingdom incorporated the European Convention on Human Rights into domestic law, protecting citizens' rights to life and a fair trial. However, it lacks a written constitution and Parliament has the authority to change or limit rights based on certain legal principles.

Citizenship rights in India are guaranteed by the Indian Constitution, which has a detailed list of fundamental rights in Part III. Indian citizens enjoy the right to equal treatment under the law, freedom of speech and expression, freedom of religion, and cultural and educational rights. Citizens have the right to vote and participate in the democratic process, which includes regular elections at the national, state, and local levels. However, citizenship rights in India can be limited, notably in circumstances of national security or public order, as outlined in the Constitution and several statutes.

In India:

The Citizenship Amendment Act (CAA) is a contentious piece of legislation passed in India in December 2019. It is due to be enforced in March 2024. The Act changes the Citizenship Act of 1955 to offer citizenship to persecuted religious minorities in the neighbouring countries. These countries are Afghanistan, Bangladesh, and Pakistan. Its major provision provides accelerated citizenship to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian immigrants who entered India illegally before December 2014. However, the Muslims are omitted from this list. This is the reason because of which the Act has sparked domestic and international criticism. Those who are protesting argue that it is discriminatory. In their opinion the Act violates India's secular ideals enshrined in the Constitution.¹⁵ Their concern is that the CAA when combined

¹⁴ US Department of State, <https://www.state.gov/reports/2022-report-on-international-religiousfreedom/afghanistan/>, (last visited on January 21st, 2024).

¹⁵ Pottekkat B and Law L, "Live Law" (*Live Law*, December 26, 2019) <<https://www.livelaw.in/lawschool/articles/analysing-the-narratives-against-the-citizenship-amendment-act-151106>>

with the National Register of Citizens (NRC) and National Population Register (NPR) will render millions of Indian Muslims stateless in case they cannot show documentary proof. The legal challenges to the CAA continue, with petitions filed in the Supreme Court of India disputing its legitimacy.¹⁶ The supporters of the CAA state that it provides a road to citizenship for persecuted minorities in primarily Muslim countries. They argue that it is a humanitarian act intended to protect disadvantaged communities.¹⁷

In the US:

President Joe Biden brought rules known as the USA Citizenship Act of 2021. It died at the realisation of the 117th Congress. The motion endorsed changing all references to “alien” with “noncitizen,” addressing growing issues that the word became derogatory. The Bill would amend Section 245 of the Immigration and Nationality Act to address adjustment of status. It is a procedure by which a noncitizen who is already in the United States can acquire lawful permanent residency (green card) while not having to tour overseas and obtain an immigrant visa from a US consulate. The Act tried to provide a direction to permanent residency and citizenship for Deferred Action for Childhood Arrivals beneficiaries and those who emigrated as minors but now best had deportation protection and employment rights based on presidential order in place of rules.¹⁸ Temporary protected status is a humanitarian provision that permits persons who were there during an armed conflict or catastrophe in their home country to lawfully remain and work in the United States until the triggering circumstances are met. The legislation includes elements from the National-Origin Based Anti-Discrimination Act for Non-immigrants (NO-BAN) Act. This would prohibit any future government from imposing a restriction comparable to Donald Trump's Executive Order 13769, often known as the "Muslim Ban".

Representatives from several states, including Indiana, Mississippi, and Oklahoma, have introduced bills in their respective legislatures that seek to deprive Americans of the 14th Amendment's fundamental protections by requiring states to deny standard birth certificates to

¹⁶ FREE LAW, <https://www.freelaw.in/supremecourtupdates/SC-reserves-verdict-on-petitions-challenging-the-constitutional-validity-of-Section-6A-of-the-Citizenship-Act-1955>, (last visited on January 20th, 2024).

¹⁷ Halder B, “Doubtful Citizenship: Data and Division in India’s New Citizenship Laws” (*PS: Political Science & Politics*, August 12, 2021) <<https://www.cambridge.org/core/journals/ps-political-science-and-politics/article/abs/doubtful-citizenship-data-and-division-in-indias-new-citizenshiplaws/EB35783847A4830207135E7531BBDD9C>>

¹⁸ Dr. Prasad and *et. al.*, *An investigation of anti CAA Campaign*, JOURNAL OF CRITICAL REVIEWS (JCR), Vol. 9, Issue 1, (2022).

many U.S. citizen babies born in the United States to immigrants.¹⁹ The proposed proposal would also require all persons in the United States, regardless of citizenship, to confirm their status before getting a standard birth certificate for their baby. Supporters of these regulations believe that residents from other countries enter the United States with the goal of having kids inside our borders, giving illegal parents an advantage in terms of family ties. The proposed measure clearly defies the 14th Amendment's provision that all individuals born in the United States and subject to its jurisdiction are citizens of both the country and the state in which they reside.

Limitation of the Study

The political systems and legal frameworks of the US, UK and India are very different among each other. While the Constitution of the UK is unwritten and is based on parliamentary sovereignty, the Constitution of India is written and is based on federalism. The U.S. also has a written constitution. The rights and responsibilities of citizens are defined by the specific historical circumstances of each nation. The United States is a nation with a rich heritage of freedom and immigration. Many changes have occurred in British law and constitutional law because of its complicated colonial past. India being a colony of the British has a history of nation-building which is multifaceted. Citizenship by birth, ancestry, or naturalisation are all used differently in these nations. All these nations are powerful with far-reaching effects on the world.

Conclusion

Finally, exploring the complexities of citizenship in India, the United Kingdom, and the United States reveals an intriguing tapestry woven from historical legacies, legal systems, and cultural settings. Each country's approach to citizenship reflects a distinct combination of traditions, ideals, and current issues, influencing citizens' rights and obligations. India's citizenship landscape is strongly influenced by its colonial history and unique cultural mix. India's citizenship rules are based on jus soli principles and include provisions for citizenship by descent and naturalisation. Recent arguments over the Citizenship Amendment Act highlight

¹⁹ Kolappan B, "CAA Was Enacted to Prove That Our Constitution Has No Value: Hol. Thirumavalavan" (*The Hindu*, February 24, 2020) <<https://www.thehindu.com/news/national/tamil-nadu/caa-was-enacted-to-prove-thatour-constitution-has-no-value/article30897949.ece>>

continuing concerns about the borders of inclusion and exclusion in Indian society.

In contrast, the UK functions under a system that has aspects of both *jus soli* and *jus sanguinis*. Birthright citizenship is essential, but the country also has severe conditions for naturalisation.

Recent developments in the Brexit crisis have heightened debates regarding immigration rules, residence, and the notion of British citizenship. Across the Atlantic, the United States has a long history of *jus soli* citizenship, bolstered by a strong focus on individual rights. Despite this, there are ongoing arguments over immigration policy, the status of illegal migrants, and noncitizens' rights. These discussions mirror greater cultural issues between inclusion and security in the United States. All three countries face basic challenges about identity, belonging, and community in an increasingly linked globe. As globalisation transforms demography and politics, the notion of citizenship evolves to reflect the goals and values of many cultures.

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